IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8232 of 1995

DEVRAJ KANA RADA

Versus

MAMLATDAR OF TALALA TALUKA

Appearance:

1. Special Civil Application No. 8232 of 1995

MR HD VASAVADA for Petitioner No. 1

..... for Petitioner No. 2

MR PR ABICHANDANI, AGP, for Respondent No. 1-4

CORAM : MR.JUSTICE M.S.SHAH

Date of Order: 24/07/2001

ORAL ORDER BELOW THE NOTE DT.12-7-2001 WITH DRAFT AMENDMENT

Mr. Vasavda has moved the draft amendment today.

2. The petition, as already filed on 21-9-1995, challenged the order dated 21-7-1995 (Annexure A) by which the Mamlatdar, Talala (Gir) in Junagadh District dismissed the application of Minor Devraj Kana Rada, C/o. Kana Sarman Rada for issuance of the certificate that Devraj Kana Rada, petitioner No.1 herein, belong to a Scheduled Tribe. Petitioner No.2 is the father of petitioner No.1. Both have been residing at Mangrol Town in Junagadh District.

3. The petition came to be opposed. Affidavit-in-reply was filed by the Mamlatdar for justifying the decision on merits.

Notice was issued on 16-10-1995. Thereafter the petition was admitted on 30-1-1996, on which date, this Court also granted mandatory interim relief directing the Mamlatdar to grant the caste certificate in favour of petitioner No.1 on the ground that since petitioner No.2 (i.e. the father of petitioner No.1) was already granted a certificate that petitioner No.2 belongs to a Scheduled Tribe, there was no reason for not directing the

Mamlatdar to issue a similar certificate in favour of petitioner No.1.

4. After the aforesaid mandatory interim order was passed, Misc. Civil Application No.455 of 1996 came to be filed by the authorities on 21-3-1996 pointing out that the certificate which was earlier issued in favour of petitioner No.2 was already cancelled by the Director, Tribal Welfare on 20-12-1995 and, therefore, the mandatory interim order was required to be reviewed. That application was served on the learned counsel for the petitioner on 22-3-1996. It was listed for hearing on five times before it was ordered to be heard with the main matter. When the Misc. Civil Application was again moved before this Court on 11-6-2001, the main petition was ordered to be listed for final hearing on 19-6-2001.

This petition reached hearing on 19-6-2001, and at the instance of Mr. Vasavda for the petitioner, the hearing was adjourned from time to time.

5. When the matter was peremptorily fixed for hearing today, Mr. Vasavda has moved the draft amendment whereby the petitioners seek to challenge the order dated 20-12-1995 by insertion of prayer clause 12 (AA). The prayer sought to be introduced in the petition, apart from insertion of para-5 (A) in support of the said prayer, is that the order dated 20-12-1995 passed by the Director of Scheduled Tribe in malafide exercise of powers cancelling the Caste Certificate of petitioner No.2 be quashed and set aside since the same was issued to defeat the petition of the petitioners.

6. Mr. Vasavda, learned counsel for the petitioner has submitted that since the aforesaid prayer is connected with the prayer in the main petition, the amendment deserves to be granted.

7. Mr. P.R. Abichandani, learned Assistant Government Pleader appearing for the respondent-authorities has vehemently opposed the amendment and has submitted that in July, 2001, the petitioner seeks to challenge the order which was passed in December, 1995 i.e. after more than five years. The learned AGP further submits that apart from the gross delay in challenging the aforesaid order for which no explanation has been offered by the petitioners, the petitioners had obtained mandatory interim order dated 30-1-1996 from this Court by suppressing the material fact that the caste certificate issued in favour of petitioner No.2 earlier was already cancelled by the

authorities on 20-12-1995 and that the process of cancellation of the said certificate was already initiated long prior to filing of the present petition in September, 1995.

8. The amendment is not moved along with a civil application, though the petition was admitted long back in January, 1996. As per the practice of this Court once the petition is admitted, amendment of the petition can be prayed for through a civil application on affidavit. However, the Court does not propose to reject the draft amendment on that technical ground.

9. In view of the fact that amendment has been moved after gross delay of more than five years for which no explanation is forthcoming even from petitioner No.2, who is a medical doctor, the Court rejects the petitioners' prayer for permission to amend the petition by insertion of paragraph 5 (A) and 12 (AA) as contained in the draft amendment dated 12-7-2001 which has been tendered by Mr. Vasavda for the petitioners only today.

(M.S. Shah,J)

zgs/-